



1 John M. Restaino, Jr., D.P.M., J.D., MPH (#138268)

2 **RESTAINO SILER, LLC**

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8 Ryan L. Thompson (*Pro Hac Vice* application anticipated)

9 **WATTS GUERRA LLP**

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16 *Attorneys for Plaintiffs*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF LOS ANGELES**

19 **CENTRAL CIVIL WEST**

20 Coordination Proceeding
21 Special Title (Rule 1550(B))

JCCP No. 4574

The Honorable William F. Highberger
Department 307

22 **BYETTA CASES**

**FIFTY-FIFTH PETITION FOR
COORDINATION OF ADD-ON
CASE TO BYETTA®
COORDINATION PROCEEDING**

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1 Plaintiffs, in the case referenced in Exhibit "A", petition this Court for coordination
2 of the Add-On Case listed in Exhibit "A" hereto on the following grounds:

3 1. On June 10, 2009, the Honorable Judge Carl J. West granted a Petition for
4 Coordination of five related cases pursuant to Section 404, et seq. of the California Code
5 of Civil Procedure (the "Coordinated Actions"). Thereafter, the California Judicial
6 Council assigned the cases to this Court for coordinated proceedings under the title
7 "Byetta Cases", JCCP No. 4574.

8 2. Plaintiffs in the coordinated Action allege personal injuries caused by the
9 prescription drug Byetta®.

10 3. The Add-On Action listed in Exhibit "A" is related to the Coordinated
11 Actions, in that the complaint is based on the same or similar allegations of personal
12 injury arising from Plaintiffs' use of Byetta®.

13 4. The Add-On Action listed in Exhibit "A" is appropriate for coordinated
14 proceedings with the Coordinated Actions pursuant to California Code of Civil
15 Procedure § 404.1. The case asserts personal injury claims relating to the same product.
16 Coordinated proceedings will promote the ends of justice by efficiently utilizing this
17 State's judicial resources, avoiding inconsistent rulings and promoting economy and
18 efficiency for all parties, witnesses and counsel.

19 5. Accordingly, Plaintiffs respectfully petition this Court for coordination of
20 the Add-On Action with this proceeding.

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1 Dated: May 2, 2014

Respectfully submitted,

2 **THE RESTAINO SILER, LLC**

3 
4 John M. Restaino, Jr., D.P.M., J.D., MPH (#138268)
5 Restaino Siler, LLC

6 And

7 Ryan L. Thompson (*Pro Hac Vice* application anticipated)
8 **WATTS GUERRA LLP**

9 *Attorneys for Plaintiff* s

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EXHIBIT "A"

Case Name	County Filed	Case No.	Plaintiffs' Attorney
Nicolette Kreis, et al. v. McKesson Corporation, et al.	San Diego	37-2014- 00009053-CU- PL-CTL	John M. Restaino, Jr., D.P.M., J.D., MPH RESTAINO SILER, LLC 1700 Lincoln Street, Suite 2920 Denver, CO 80203 Telephone: 303-839-8000 Facsimile: 888-771-5259 And Ryan L. Thompson WATTS GUERRA LLP 5250 Prue Road, Suite 525 San Antonio, Texas 78240 Office: 210.448.0500Fax: 210.448.0501



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16 *Attorneys for Plaintiffs*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL CIVIL WEST

COORDINATION PROCEEDING
SPECIAL TITLE (RULE 1550(B))

JCCP No. 4574

The Honorable William F. Highberger
Department 307

BYETTA CASES

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
FIFTY-FIFTH PETITION FOR
COORDINATION OF ADD-ON
CASE TO BYETTA®
COORDINATION PROCEEDING**

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1 Plaintiffs, in the case referenced in Exhibit "A", submit the following
2 Memorandum of Points and Authorities in support of coordination of the case listed in
3 Exhibit "A" to its Fifty-Fifth Petition for Coordination of Add-On Case.

4 **I. COORDINATED PRETRIAL PROCEEDINGS IN THE ADD-ON CASE WILL**
5 **PROMOTE THE ENDS OF JUSTICE.**

6 On June 10, 2009, five related cases were coordinated pursuant to California Code
7 of Civil Procedure § 404, *et seq.*, and assigned to this Court for further proceedings.

8 Exhibit "A" to the Fifty-Fifth Petition for Coordination of Add-On Case identifies
9 a case which involves allegations about Byetta® and which have not been the subject of a
10 prior petition for coordination or Add-On Petition. Like the complaints in the
11 previously coordinated actions, the complaint in this Add-On Action contain similar
12 product liability allegations and claims against one or more of the Defendants.
13 Accordingly, the cases meet the statutory requirements for coordination. See Cal. Civ.
14 Proc. Code § 404.1; McGhan Med. Corp. v. Sup. Ct. (Hogan), 11 Cal. App. 4th 804 (1992)
15 (ordering coordination of breast implant cases involving similar products and claims).

16 Coordination of the Add-On Case will benefit all parties and ease the burden of
17 this litigation on California's courts. Coordinated proceedings will have significant
18 advantages in efficiency, convenience and cost. Therefore, coordinated proceedings will
19 promote the ends of justice by efficiently utilizing this State's judicial resources, avoiding
20 inconsistent rulings, and promoting economy and efficiency for all parties, witnesses
21 and counsel. (See Declaration of John M. Restaino, Jr., ¶¶ 2-9.)

22 **II. CONCLUSION.**

23 For all of the foregoing reasons, Plaintiffs respectfully request that this Fifty-Fifth
24 Petition for Coordination of Add-On Case be granted.

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1 Dated: May 2, 2014

Respectfully submitted,

2 **THE RESTAINO SILER, LLC**

3 
4 John M. Restaino, Jr., D.P.M., J.D., MPH (#138268)

5 Restaino Siler, LLC

6 And

7 Ryan L. Thompson (*Pro Hac Vice* application anticipated)
8 **WATTS GUERRA LLP**

9 *Attorneys for Plaintiff* s

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EXHIBIT "A"

Case Name	County Filed	Case No.	Plaintiffs' Attorney
Nicolette Kreis, et al. v. McKesson Corporation, et al.	San Diego	37-2014- 00009053-CU- PL-CTL	John M. Restaino, Jr., D.P.M., J.D., MPH RESTAINO SILER, LLC 1700 Lincoln Street, Suite 2920 Denver, CO 80203 Telephone: 303-839-8000 Facsimile: 888-771-5259 And Ryan L. Thompson WATTS GUERRA LLP 5250 Prue Road, Suite 525 San Antonio, Texas 78240 Office: 210.448.0500Fax: 210.448.0501



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL CIVIL WEST

COORDINATION PROCEEDING
SPECIAL TITLE (RULE 1550(B))

JCCP No. 4574

The Honorable William F. Highberger
Department 307

BYETTA CASES

**DECLARATION OF JOHN M.
RESTAINO, JR. IN SUPPORT OF
FIFTY-FIFTH PETITION FOR
COORDINATION OF ADD-ON
CASE TO BYETTA®
COORDINATION PROCEEDING**

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1 1. I am an attorney at law licensed to practice before the courts of the State of
2 California and am a partner with the law firm of Restaino Siler, LLC, counsel of record for
3 Plaintiffs. I submit this Declaration in support of the Fifty-Fifth Petition for Coordination
4 of Add-On Case ("Petition"). I have personal knowledge of the facts set forth in this
5 declaration, and could and would testify to them if called upon to do so in a court of law.

6 2. A number of cases involving the pharmaceutical prescription drug Byetta®
7 ("Byetta") have already been coordinated before this Court ("Coordination Proceeding").

8 3. Additional cases listed in Plaintiffs' Petition, which are now pending in the
9 California Superior Court, like the complaints filed in prior cases within the Coordination
10 Proceeding, allege that Byetta has caused plaintiffs' injuries.

11 4. Coordinated proceedings will promote the ends of justice by efficiently
12 utilizing this state's judicial resources, avoiding inconsistent rulings, and promoting
13 economy and efficiency for parties, witnesses and counsel.

14 5. The case is a complex action, as that term is defined by Cal. Rule of Court
15 1800, because it will require exceptional judicial management. Petitioners expect there to
16 be numerous pre-trial motions raising difficult issues and a substantial amount of
17 documentary evidence.

18 6. Petitioners expect to seek discovery of the general facts about Defendants'
19 development and marketing of Byetta, including the drug's extensive FDA approval
20 process, though the information actually provided by the physician and relied on by any
21 given plaintiff is expected to vary from case to case. Plaintiffs will also seek discovery of
22 the underlying science concerning the therapeutic benefits and the known and reasonably
23 scientifically knowable risks of Byetta. As a result, there will be overlapping efforts to
24 seek discovery concerning the development, testing, and marketing of Byetta and
25 whether there is any scientific proof that Defendants failed to warn of known of
26 reasonably knowable risks.

27 7. There will be some common legal issues in the Byetta cases, although none
28 will predominate over individual issues in these personal injury actions. Such issues may

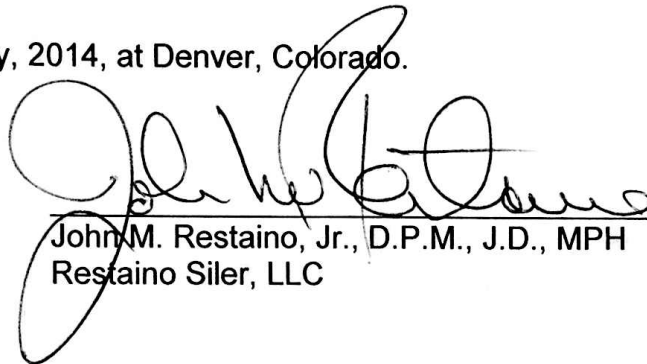
1 none will predominate over individual issues in these personal injury actions. Such issues
2 may be presented on summary judgment, or otherwise before trial. Petitioners do not
3 seek joint trials of any cases or plaintiffs, but rather, all claims shall be tried individually.

4 8. To the extent there are the same or similar experts in the Byetta cases,
5 there will be Kelly/Leahy or other expert related motions. There will also be discovery
6 issues concerning the issuance, scope, and enforcement of a protective order covering
7 Defendants' confidential records and trade secrets.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

10 Executed this 2nd day of May, 2014, at Denver, Colorado.

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Restaino Siler, LLC



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FOR THE COUNTY OF LOS ANGELES

CENTRAL CIVIL WEST

COORDINATION PROCEEDING
SPECIAL TITLE (RULE 1550(B))

JCCP No. 4574

The Honorable William F. Highberger
Department 307

BYETTA CASES

**[PROPOSED] ORDER GRANTING
FIFTY-FIFTH PETITION FOR
COORDINATION OF ADD-ON
CASE TO BYETTA®
COORDINATION PROCEEDING**

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1 The Court finds that coordination and transfer of the following Add-On Case to
2 this Coordination Proceeding is appropriate under Cal. Code of Civ. Proc. Section 404.1:

3 San Diego Superior Court

4 *Nicolette Kreis, et al. v. McKesson Corporation, et al.*, Case No. 37-2014-00009053-
5 CU-PL-CTL.

6 **IT IS HEREBY ORDERED** that the Fifty-Fifth Petition for Coordination of Add-
7 On Case brought by petitioner to Coordination Proceeding *Byetta*® Cases, JCCP No. 4574
8 is GRANTED. It is further ordered that the Court where the above case was originally
9 filed shall transfer this matter, including the entire case file, to JCCP 4574 in Department
10 307 located at 600 South Commonwealth Avenue, Los Angeles, California 90005.
11 Furthermore, any and all court dates, deadlines, and other proceedings in the originating
12 Court shall be vacated. Plaintiffs shall provide notice of this Order to the Chairman of
13 the Judicial Council and to the clerk of the Court in which the above case was originally
14 filed.

15 Dated: _____

16 The Honorable William F. Highberger
17 Coordination Trial Judge
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COORDINATION PROCEEDING
SPECIAL TITLE (RULE 1550(B))

JCCP No. 4574

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Department 307

BYETTA CASES

PROOF OF SERVICE OF FIFTY-FIFTH PETITION FOR COORDINATION OF ADD-ON CASE TO BYETTA® COORDINATION PROCEEDING

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PROOF OF SERVICE

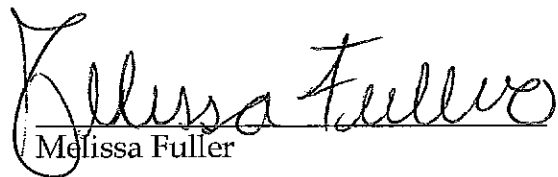
I am a citizen of the United States of America and a resident of San Antonio, Texas or employed in the County of Bexar, State of Texas. I am over the age of eighteen (18) and not a party to the within action. My business address is Watts Guerra LLP, 5250 Prue Road, Suite 525, San Antonio, Texas 78240.

On May 2, 2014, I served the foregoing documents:

1. FIFTY-FIFTH PETITION FOR ADD-ON CASE TO BYETTA COORDINATION PROCEEDING;
2. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FIFTY-FIFTH PETITION FOR COORDINATION OF ADD-ON CASE TO BYETTA COORDINATION PROCEEDING
3. DECLARATION OF JOHN M. RESTAINO, JR. IN SUPPORT OF FIFTY-FIFTH PETITION FOR COORDINATION OF ADD-ON CASE TO BYETTA® COORDINATION PROCEEDING
4. [PROPOSED] ORDER GRANTING FIFTY-FIFTH PETITION FOR COORDINATION OF ADD-ON CASE TO BYETTA® COORDINATION PROCEEDING;
5. PROOF OF SERVICE OF FIFTY-FIFTH PETITION FOR ADD-ON CASE TO BYETTA COORDINATION PROCEEDING,

by submitting an electronic version of the document via FTP upload to File & ServeXpress (formerly known as Lexis Nexis File & Serve) pursuant to the Court's Order mandating electronic service for service on the recipients designated on the Transaction Receipt located on the FS website.

I declare under penalty of perjury under the laws of the State of Texas that the above is true and correct. Executed on May 2, 2014, in San Antonio, Texas.


Melissa Fuller